

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF ALASKA**

3
4 DOUGLAS N. LANE,

5 Plaintiff,

6 v.

Case No. 3:22-cv-00132-SLG-KFR

7 CHELSEA GORUP, *et al.*,

8 Defendants.
9

10 **REPORT AND RECOMMENDATION TO DISMISS PLAINTIFF’S COMPLAINT**
11 **WITHOUT PREJUDICE**

12 On May 24, 2022, Douglas N. Lane, a self-represented prisoner (hereinafter
13 “Plaintiff”), filed a Prisoner’s Complaint Under The Civil Rights Act, 42 U.S.C. § 1983,
14 a Prisoner’s Application to Waive Prepayment of the Filing Fee, and a civil cover
15 sheet.¹ Subsequently, Plaintiff filed a Letter to the Court, a First Amended Complaint
16 (hereinafter “Amended Complaint”), a Motion to Appoint Counsel, a Motion for
17 Summary Judgment, and a Motion for Relaxation of the Rules.² The Court issued a
18 screening order on October 13, 2022, dismissing Plaintiff’s Complaint for failure to
19 state a claim upon which relief could be granted, but granted him leave to amend his
20 complaint or file a notice of voluntary dismissal.³ Plaintiff subsequently filed a
21 Motion to Amend his Complaint, a Second Amended Complaint and a Motion to
22 Appoint Counsel.⁴

23 The Court now screens Plaintiff’s Second Amended Complaint in accordance
24 with 28 U.S.C. §§ 1915(e) and 1915A,⁵ and offers its report and recommendation.

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¹ Docs. 1, 2, & 4.

26 ² Docs. 5-9.

27 ³ Doc. 11.

28 ⁴ Docs. 12-14.

⁵ See Fed. R. Civ. P. 15(a); Local Civil Rule 15.1; *Ramirez v. Cnty. of San Bernardino*, 806 F.3d.

SCREENING STANDARD

Federal law requires a court to conduct an initial screening of a civil complaint filed by a self-represented prisoner seeking a waiver of the prepayment of the filing fee. In this screening, a court shall dismiss the case at any time if the court determines that the action:

- (i) is frivolous or malicious;
- (ii) fails to state a claim on which relief may be granted; or
- (iii) seeks monetary relief against a defendant who is immune from such relief.⁶

To determine whether a complaint states a valid claim for relief, courts consider whether the complaint contains sufficient factual matter that, if accepted as true, “state[s] a claim to relief that is plausible on its face.”⁷ In conducting its review, a court must liberally construe a self-represented plaintiff’s pleading and give the plaintiff the benefit of the doubt.⁸ Before a court may dismiss any portion of a complaint for failure to state a claim upon which relief may be granted, the court must provide the plaintiff with a statement of the deficiencies in the complaint and an opportunity to amend or otherwise address the problems, unless to do so would be futile.⁹ Futility exists when “the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency[.]”¹⁰

1002, 1008 (9th Cir. 2015) (citing *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997), *overruled on other grounds by Lacey v. Maricopa Cnty.*, 693 F.3d 896 (9th Cir. 2012)) (stating “an amended complaint supersedes the original, the latter being treated thereafter as non-existent”).

⁶ 28 U.S.C. § 1915(e)(2)(B); *see also* 28 U.S.C. § 1915A(a), (b).

⁷ *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In making this determination, a court may consider “materials that are submitted with and attached to the Complaint.” *United States v. Corinthian Colleges*, 655 F.3d 984, 999 (9th Cir. 2011) (citing *Lee v. L.A.*, 250 F.3d 668, 688 (9th Cir. 2001)).

⁸ *See Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985) (en banc)).

⁹ *See Gordon v. City of Oakland*, 627 F.3d 1092, 1094 (9th Cir. 2010) (citing *Albrecht v. Lund*, 845 F.2d 193, 195 (9th Cir. 1988)).

¹⁰ *See Schreiber Distributing Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986).

DISCUSSION

Plaintiff alleges Fourteenth Amendment due process violations against three child support specialists with the State of Alaska's Child Support Services Division pursuant to 42 U.S.C. § 1983. As a threshold matter, Plaintiff's Second Amended Complaint does not provide facts to indicate that the Court has subject matter jurisdiction to hear this case as currently pled. The *Rooker-Feldman* doctrine, detailed below, prohibits the Court from exercising jurisdiction over a de facto state court appeal. Accordingly, the Court recommends dismissing Plaintiff's Second Amended Complaint without prejudice.

I. Second Amended Complaint

In his Second Amended Complaint, Plaintiff sues Child Support Manager Mike Miller, and Child Support Specialists Chelsea Gorup and Lori McDonnell (hereinafter "Defendants"), all in their individual capacities.¹¹ Broadly, Plaintiff alleges that the ordering and implementation of his child support obligations violates his Fourteenth Amendment due process rights, and that Defendants lacked subject matter jurisdiction to implement such obligations.¹²

In Claim One, Plaintiff alleges that on or about August 21, 2021, Defendant Miller, acting under the authority of the State of Alaska, violated his right to due process by "ordering administratively an obligation of support without adequate notice and audience or participation by myself all while lacking subject matter jurisdiction to do so."¹³ Plaintiff alleges that this order to make child support payments and the subsequent seizure of his money "during Covid-19 pandemic under

¹¹ Doc. 13 at 2. The Court dismissed Plaintiff's First Amended Complaint with leave to amend because it did not meet Rule 8 pleading requirements as it related to his demand for relief, and it did not fully meet the elemental pleading requirements of a civil rights action under § 1983 because Plaintiff sued Defendants in both their individual and official capacities, and sought both injunctive relief and damages, which is impermissible. See Screening Order at Doc. 11.

¹² *Id.* 3-4.

¹³ *Id.* at 3.

1 State of Emergency under A.S. § 11.51.120(d) non payment of support is a class C
2 Felony requiring A.S. § 25.27.250 legal assistance by department of law.”¹⁴

3 In Claim Two, Plaintiff alleges that on or about August 21, 2021, Defendant
4 “McDonnel, while under the authority of the state of Alaska violated my Due Process
5 Rights” by “personally assisting in an order obligating administratively on order of
6 said support.”¹⁵ Plaintiff further alleges that the order obligating child support
7 payment lacked subject matter jurisdiction, notice to him, and participation by
8 him.¹⁶

9 In Claim Three, Plaintiff alleges that on or about August 21, 2021, Defendant
10 Gorup violated his right to due process by continuing the “extortion” of his money
11 via child support obligation. Plaintiff claims that “[t]he predatory collection
12 practices demonstrated by [Defendant Gorup] in the face of overwhelming evidence
13 challenging the validity of the order have had profound monetary and emotionally
14 negative impacts on my family unit.”¹⁷

15 In support of his Complaint, Plaintiff submits Exhibits A-D, consisting of his
16 2012 Administrative Child Support and Medical Support Order; Alaska Child Support
17 Services Division Automated Audit Report Summary dated July 15, 2022, referencing
18 case number 001183655; a letter addressed to Plaintiff from Defendant Gorup listing
19 his two child support case numbers; and Alaska Child Support Services Division
20 Automated Audit Report Summary dated July 15, 2022, referencing Plaintiff’s second
21 child support case number, 001151323, respectively.¹⁸

22 For relief, Plaintiff requests: 1) \$33,451.02 in damages; 2) \$2,500,000.00 in
23 punitive damages; 3) an order requiring Defendants to “[p]ay all Legal and Court
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26 ¹⁴ *Id.*

27 ¹⁵ *Id.* at 4.

28 ¹⁶ *Id.*

¹⁷ *Id.* at 5.

¹⁸ Docs. 13-1-4.

1 Fees involved.”¹⁹ Plaintiff does not seek trial by jury.²⁰

2 **II. Subject Matter Jurisdiction - *Rooker-Feldman* Doctrine**

3 The Court previously warned Plaintiff in its last screening order that because
4 Plaintiff challenged his child support obligations without sufficient factual detail,
5 the Court could not determine at that time whether it had subject matter jurisdiction
6 over this action.²¹ Plaintiff’s Second Amended Complaint and supporting exhibits
7 make it clear that he is in fact seeking to challenge a State of Alaska court order and
8 judgment of his child support obligations. What remains unclear to the Court is
9 whether Plaintiff ever began an appeal of this state court decision, is in the process
10 of doing so, or if he ever received a final judgment on that appeal that might then
11 permit federal jurisdiction.

12 As the Court previously mentioned in its Screening Order, the *Rooker-Feldman*
13 doctrine “prohibits a federal district court from exercising subject matter
14 jurisdiction over a suit that is a de facto appeal from a state court judgment.”²² A de
15 facto appeal occurs “when the federal plaintiff both asserts as [his] injury legal error
16 or errors by the state court and seeks as [his] remedy relief from the state court
17 judgment.”²³ If the plaintiff has brought a de facto appeal, then *Rooker-Feldman*
18 dictates that the district court cannot review any issues presented in the suit that
19 are “inextricably intertwined” with the de facto appeal.²⁴

20 Although the *Rooker-Feldman* doctrine is generally a narrow exception to this
21 Court’s jurisdiction, here, it appears to bar Plaintiff’s claim. Plaintiff’s allegations

22 ¹⁹ *Id.* at 8.

23 ²⁰ *Id.*

24 ²¹ Doc. 11.

25 ²² *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1139 (9th Cir. 2004).

26 ²³ *Id.* at 1140 (finding that allegations of extrinsic fraud committed by adverse party on the
27 state court was not a de facto appeal because it was not an error by the state court); *see also*
28 *Ismail v. Cnty. of Orange*, 693 Fed. App’x 507, 510 (9th Cir. 2017) (finding that allegations
of extrinsic fraud that the state court had already addressed were barred by *Rooker-*
Feldman).

²⁴ *Kougasian*, 359 F.3d at 1142 (citing *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 483
n.16 (1983)).

1 against Defendants challenge the legal rulings and procedural findings in his child
2 custody case. Plaintiff submits exhibits in support of his claim that list case numbers,
3 as well as contact information regarding his child support case.²⁵ His claims against
4 Defendants stem from the state court clerks' administrative procedures as applied
5 to him, and his claimed injury stems from alleged errors by the state court judgment
6 that resulted in the child support obligations he disputes and seeks relief from.²⁶

7 Plaintiff's Complaint does not indicate that he presented his case in the state
8 court, where he must first proceed, before turning to federal court with hopes for a
9 different outcome. As the Supreme Court explained, the *Rooker-Feldman* doctrine
10 applies to "cases brought by state-court losers complaining of injuries caused by
11 state-court judgments rendered before the district court proceedings commenced
12 and inviting district court review and rejection of those judgments."²⁷ His suit in
13 federal court is a de facto appeal from the state court's order resulting in his child
14 support obligations.

15 If Plaintiff has not appealed his state court order in state court, he must begin
16 there and receive a judgment before he may consider taking it to federal court. If
17 Plaintiff has ongoing state court actions regarding the support or custody of his
18 children, this Court must abstain because federal district courts may not interfere
19 with ongoing enforcement proceedings in state courts.²⁸

20 Thus, this Court has no jurisdiction over Plaintiff's claims, as plead, which
21 appear to be de facto appeals of his State of Alaska child custody case. The Court
22 previously granted Plaintiff an opportunity to amend his Complaint. At this stage,
23 further amendment of Plaintiff's Complaint would not cure the deficiencies and
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26 ²⁵ Docs. 13-1-4.

27 ²⁶ Doc. 13 at 8.

28 ²⁷ *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005)

²⁸ *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69, 72-73 (2013) (extending the
abstention principles established in *Younger v. Harris*, 401 U.S. 37 (1971) to civil matters).

1 would be futile.²⁹

2 CONCLUSION

3 Plaintiff's Second Amended Complaint appears to be a de facto appeal of his
4 State of Alaska 2012 Administrative Child Support and Medical Support Order.
5 Without the conclusion of a formal appeal in state court, the *Rooker-Feldman*
6 doctrine prohibits federal jurisdiction over Plaintiff's claims. Accordingly, the Court
7 recommends **DISMISSING** Plaintiff's Second Amended Complaint without prejudice.
8 Plaintiff should be directed to pursue his appeal in state court or show proof of
9 appellate judgment. The Court further recommends that all pending motions be
10 **DENIED** as moot.

11 CAUTION TO PLAINTIFF

12 The Court recommends Dismissal of Plaintiff's Complaint without prejudice
13 but provides the following analysis to caution Plaintiff regarding his claims should
14 he seek an appeal in state court and chose to return to this Court afterwards.

15 I. Failure to State a Claim

16 Rule 8 of the Federal Rules of Civil Procedure instructs that a complaint must
17 contain a "short and plain statement of the claim showing that the [complainant] is
18 entitled to relief." A complaint should set out each claim for relief separately. Each
19 claim should identify (1) the specific harm that Plaintiff is alleging has occurred to
20 him, (2) when that harm occurred, (3) where that harm was caused, and (4) who he
21 is alleging caused that specific harm to him. Importantly, a complaint must also
22 include a demand for the relief sought.³⁰ This requires that a complaint articulate
23 what relief a plaintiff requests, for example money damages, injunctive relief, or
24 some other equitable remedy.

25 Factual allegations may not be speculative but must plead "factual content

26 ²⁹ See *Gordon v. City of Oakland*, 627 F.3d 1092, 1094 (9th Cir. 2010) (citing *Albrecht v. Lund*,
27 845 F.2d 193, 195 (9th Cir. 1988)); See *Schreiber Distributing Co. v. Serv-Well Furniture Co.*,
28 806 F.2d 1393, 1401 (9th Cir. 1986).

³⁰ Fed. R. Civ. P. 8(a)(3).

1 that allows the court to draw the reasonable inference that the defendant is liable
2 for the misconduct alleged.”³¹ While a complaint need not contain every precise,
3 factual detail, “unadorned, the defendant-unlawfully-harmed-me accusation[s]” are
4 insufficient to state a claim.³² A complaint is insufficiently plead if it offers “naked
5 assertions devoid of further factual enhancement.”³³ A complaint that offers legal
6 conclusions or a simple recitation of the elements of a cause of action does not meet
7 the required pleading standard.

8 Plaintiff’s Second Amended Complaint does not appear to meet the Rule 8
9 pleading requirements because it does not show that he is entitled to any relief. To
10 the contrary, Exhibit A submitted with his Second Amended Complaint shows that
11 he was informed on August 21, 2012, of his obligations via an Order for
12 Administrative Child Support and Medical Support. This order clearly stated that if
13 he did not “request an administrative review in writing within 30 days after [he
14 was] served with this order, this order automatically becomes effective 30 days after
15 service of this notice,” which complies with Alaska Statute 25.27.160 and Alaska
16 Administrative Code 15:125.150.³⁴ This Order tells the Court that Plaintiff appears
17 to have been properly noticed and given the opportunity to be heard. The Court sees
18 no Fourteenth Amendment due process violations based on Plaintiff’s claims and
19 supporting documentation, and thus no relief could be granted under these facts.

20 **II. Civil Rights Claims Under 42 U.S.C. § 1983**

21 Claims under 42 U.S.C. § 1983 have specific required elements that a plaintiff
22 must plead. Section 1983 is a federal statute that “is not itself a source of substantive
23 rights,” but provides “a method for vindicating rights [found] elsewhere.”³⁵
24 Constitutional rights are those conferred by the U.S. Constitution to individual

25 ³¹ *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

26 ³² *Id.*

27 ³³ *Id.* (internal citations and quotations omitted).

28 ³⁴ Doc. 13-1 at 2.

³⁵ *Graham v. Connor*, 490 U.S. 386, 393-94 (1989) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)).

1 citizens. Section 1983 can be used as a mechanism for enforcing the rights
2 guaranteed by a particular federal statute only if (1) the statute creates enforceable
3 rights and (2) Congress has not foreclosed the possibility of a § 1983 remedy for
4 violations of the statute in question.³⁶ Section 1983 does not provide a cause of
5 action for violations of state law.³⁷

6 In order to plead a proper § 1983 claim, a plaintiff must allege plausible facts
7 that if proven would establish each of the required elements of: “(1) a violation of
8 rights protected by the Constitution or created by federal statute, (2) proximately
9 caused (3) by conduct of a ‘person’ (4) acting under color of state law.”³⁸ Plaintiff’s
10 Second Amended Complaint does not allege sufficient facts to meet the first required
11 element, a violation of rights protected by the Constitution or created by Federal
12 statute. As stated above, Plaintiff’s Exhibit A submitted in support of his Second
13 Amended Complaint refutes his argument that his due process rights were violated.

14 **III. Fourteenth Amendment Due Process - Protected Property Interest**

15 The Due Process Clause of the Fourteenth Amendment of the U.S. Constitution
16 provides that no state shall “deprive any person of life, liberty, or property without
17 due process of law.”³⁹ A deprivation of property in violation of the Due Process
18 Clause may be either a substantive or procedural claim. For either type of claim, a
19 plaintiff must establish they have been deprived of a protected property interest and
20 that the state’s procedures did not comply with due process.⁴⁰

21 To succeed on a procedural due process claim, a plaintiff must demonstrate:
22 1) a property interest protected by the Constitution; 2) a deprivation of that interest
23 by the state; and 3) a lack of process.⁴¹ At the fundamental level, procedural due

24 ³⁶ *Blessing v. Freestone*, 520 U.S. 329, 340-41 (1997); *Dittman v. California*, 191 F.3d 1020,
25 1027-28 (9th Cir. 1999).

26 ³⁷ *Galen v. Cty. of Los Angeles*, 477 F.3d 652, 662 (9th Cir. 2007).

27 ³⁸ *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991).

28 ³⁹ U.S. Const. amend. XIV § 1.

⁴⁰ *American Manufacturers Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 59 (1999).

⁴¹ *Shanks v. Dressel*, 540 F.3d 1082, 1090 (9th Cir. 2008).

1 process requires “some kind of notice” and “some kind of hearing” before a state can
2 deprive a person of a protected property interest.⁴² To succeed on a substantive due
3 process claim, a plaintiff must demonstrate: 1) a deprivation of a protected property
4 interest, and 2) that the defendant’s conduct shocks the conscience and offends “the
5 community’s sense of fair play and decency.”⁴³

6 As stated above, Plaintiff does not allege sufficient facts as currently pled to
7 establish a violation of his due process rights under the Fourteenth Amendment as
8 they relate to a protected property interest. Again, Plaintiff’s Exhibit A refutes his
9 arguments here.

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11 DATED this 14th day of December, 2022 at Anchorage, Alaska.

12
13 s/ Kyle F. Reardon
14 KYLE F. REARDON
15 United States Magistrate Judge
16 District of Alaska

17 **NOTICE OF RIGHT TO OBJECT**

18 Under 28 U.S.C. § 636(b)(1), a district court may designate a magistrate judge
19 to hear and determine matters pending before the Court. For dispositive matters, a
20 magistrate judge reports findings of fact and provides recommendations to the
21 presiding district court judge.⁴⁴ A district court judge may accept, reject, or modify,
22 in whole or in part, the magistrate judge’s order.⁴⁵

23 A party may file written objections to the magistrate judge’s order within 14
24 fourteen days.⁴⁶ Objections and responses are limited to five (5) pages in length and

25 ⁴² *Zinermon v. Burch*, 494 U.S. 113, 127-28 (1990).

26 ⁴³ *Marsh v. Cnty of San Diego*, 680 F.3d 1148, 1154 (9th Cir. 2012) (relying on *Rochin v. California*, 342 U.S. 165, 172-73 (1952)).

27 ⁴⁴ 28 U.S.C. § 636(b)(1)(B).

28 ⁴⁵ 28 U.S.C. § 636(b)(1)(C).

⁴⁶ *Id.*

1 should not merely reargue positions previously presented. Rather, objections and
2 responses should specifically identify the findings or recommendations objected to,
3 the basis of the objection, and any legal authority in support. Reports and
4 recommendations are not appealable orders. Any notice of appeal pursuant to Fed.
5 R. App. P. 4(a)(1) should not be filed until entry of the district court's judgment.⁴⁷
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28 ⁴⁷ See *Hilliard v. Kincheloe*, 796 F.2d 308 (9th Cir. 1986).